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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 GOVERNMENT EMPLOYEES
9 INSURANCE COMPANY, a Maryland
10 corporation,

11 Plaintiff,

12 v.

13 ANDREA M. GERJETS, T.A.T., B.R.S.,
14 and B.S.U.,

15 Defendants.

16 CASE NO. 19-cv-5912-RJB

17 ORDER GRANTING DEFENDANT
18 ANDREA M. GERJETS'S MOTION
19 TO STAY

20 THIS MATTER comes before the Court on Defendant Andrea M. Gerjets's ("Ms.
21 Gerjets") Motion to Stay. Dkt. 21. The Court is familiar with the motion, materials filed in
22 support and opposition thereto, and the remainder of the record herein. For the reasons set forth
23 below, the Motion to Stay should be granted.

24 I. **BACKGROUND & FACTS**

25 This case is an insurance coverage dispute. Dkt. 10. Plaintiff Government Employees
26 Insurance Company ("GEICO") argues that it has no duty to defend Ms. Gerjets against claims
27 made by plaintiffs in an underlying case. Dkts. 10; and 24. In the underlying case, the plaintiffs
28 allege, in part, that, between 2009 and 2013, while they were under the age of 18, Richard
29 Gerjets (Ms. Gerjets's late husband) engaged in inappropriate sexual contact with them while
30 acting in his capacity as a member of the Keyport Bible Church's congregation, for which he
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1 frequently volunteered to lead, organize, and participate in church-related activities involving
2 children. Dkt. 22-1, at 13 *et seq.* The underlying plaintiffs allege further that, “[t]he inappropriate
3 sexual contact Richard Gerjets perpetrated on plaintiffs was proximately caused by or
4 proximately contributed to by Andrea Gerjets’ failure to fulfill her duty to protect plaintiffs from
5 harm when they were on her property.” Dkt. 22-1, at 16.

6 This order next provides the factual backgrounds of the insurance policy GEICO issued
7 to the Gerjets, an underlying case, a related case, and the instant Motion to Stay.

8 **A. INSURANCE POLICY**

9 GEICO issued Washington Family Automobile Insurance Policy number 0774-17-97-09
10 (“Policy”) to Ms. Gerjets and Richard Gerjets (referred to collectively as the “Gerjets”), in effect
11 December 10, 2008, to June 10, 2014. Dkts. 10, at 2; and 20-2 (providing a copy of the Policy).
12 The Policy apparently includes liability coverage for a trailer owned by the Gerjets. Dkt. 10, at 2.

13 The Policy provides, in part, the following terms:

14 **SECTION I – VACATION LIABILITY COVERAGE**-This
15 coverage is a supplement to the **Section I-Liability Coverages** in
the GEICO automobile insurance policy.

16 **DEFINITIONS**

17 * * * * *

18 **Occurrence** means an accident or event, including continuous or
19 repeated exposure to conditions, which results in **bodily injury** or
property damage neither expected nor intended from the standpoint
20 of the **insured** and the commission of an offense, or a series of
similar related offenses that arise out of the ownership
maintenance, or use of an **owned** or **non-owned auto** while at an
21 **insured location**.

22 * * * * *

23 **SECTION I – VACATION LIABILITY COVERAGE –**
LOSSES WE WILL PAY

24

1 We will defend or pay damages under this endorsement, other than
2 punitive or exemplary damages, which an *insured* becomes legally
3 obligated to pay because of ***bodily injury*** or property damage
4 resulting from an ***occurrence*** at an *insured location*.

5 * * * * *

6 **EXCLUSIONS**

7 All exclusions in **Section 1-Liability Coverages** of the GEICO
8 automobile insurance policy apply to **Vacation Liability
Coverage**.

9 We will not pay damages or defend under this endorsement if any
10 one of the following exclusions apply.

11 **Section I** does not apply to:

12 * * * * *

13 G. ***Bodily injury*** transmitted by an *insured* through
14 sexual contact.

15 * * * * *

16 J. ***Bodily injury*** or property damage arising out of
17 sexual molestation, corporal punishment, or physical
18 or mental abuse.

19 Dkt. 10, at 3–4 (emphasis in original).

20 The operative complaint provides that the Policy’s liability coverage for the trailer
21 incorporates by reference all of the exclusions contained in “Section 1-Liability Coverages of the
22 Policy,” including, in part, an exclusion that “***Bodily injury*** or property damage caused
23 intentionally by or at the direction of an *insured* is not covered.” Dkt. 10, at 4 (emphasis in
24 original).

B. UNDERLYING CASE

The underlying case is *T.A.T., et al. v. Keyport Bible Church, et al.*, 18-2-02688-18
(Kitsap Ct. Super. Ct. 2018). The underlying plaintiffs allege claims of inappropriate sexual
contact against Richard Gerjets and negligence against Ms. Gerjets. Dkt. 22-1, at 13 *et seq.*

1 The operative complaint provides that GEICO was informed that the alleged
2 inappropriate sexual contact of Richard Gerjets may have occurred, at least in part, “in a vehicle”
3 insured by GEICO. Dkt. 10, at 4–5. The operative complaint notes that “GEICO performed an
4 investigation and learned that the Underlying Plaintiffs claimed that multiple incidents of abuse
5 occurred in a trailer owned by Gerjets” and that GEICO therefore “agreed to provide a defense
6 [to Ms. Gerjets for] the Underlying Lawsuit subject to a complete reservation of rights.” Dkt. 10,
7 at 5. Ms. Gerjets indicates that GEICO is sharing the cost of her defense in the underlying case
8 with two other insurers, Civil Service Employees Insurance Company (“CSE”) and Travelers
9 Insurance Company. Dkts 21; and 22, at 2.

10 Counsel for Ms. Gerjets provides that, “The underlying litigation is rapidly approaching
11 [with] a July 2020 trial date. The parties in the underlying matter are in the course of
12 attempting to agree to a mediation before the July 2020 trial to attempt to globally resolve the
13 underlying litigation.” Dkt. 22, at 2.

14 **C. RELATED CASE**

15 The related case is *Civ. Serv. Employees Ins. Co. v. Gerjets, et al.*, 20-cv-5071-RJB
16 (W.D. Wash. 2020), another insurance coverage dispute related to the underlying case. Dkt. 22-
17 1, at 2 *et seq.* The related case’s complaint provides that CSE issued a homeowners insurance
18 policy to the Gerjets, effective August 1, 2008, to August 1, 2013. Dkt. 22-1, at 3. The related
19 complaint provides that plaintiffs in the underlying case alleged that “some of the inappropriate
20 sexual contact took place in the Gerjets residence, while the plaintiffs were social guests of Mrs.
21 Gerjets, and that she breached her duty to protect them from dangerous conditions on her
22 premises ..., including Richard Gerjets’ proclivity for engaging in inappropriate sexual contact
23 with minor boys.” Dkt. 22-1, at 4. CSE indicates that Ms. Gerjets tendered the underlying

1 complaint to CSE for defense, and “CSE agreed to participate in her defense [in the underlying
2 case] subject to a reservation of CSE’s rights as to coverage.” Dkt. 22-1, at 4.

3 CSE filed the related lawsuit against Ms. Gerjets and the underlying plaintiffs. Dkt. 22-1,
4 at 2. The related complaint requests declaratory judgment that (1) CSE’s policy provides no
5 coverage to Ms. Gerjets for the underlying plaintiffs’ claims, (2) CSE has no duty to defend Ms.
6 Gerjets for the underlying plaintiffs’ claims, (3) CSE may withdraw its defense for Ms. Gerjets,
7 and (4) CSE has no duty to indemnify Ms. Gerjets in connection with a judgment or settlement
8 as to the underlying plaintiffs’ claims. Dkt. 22-1, at 10–11.

9 Ms. Gerjets indicates that she will file a forthcoming Motion to Consolidate the instant
10 case with the related case. Dkt. 21, at 3–5.

11 **D. PENDING MOTION**

12 Ms. Gerjets filed the instant Motion to Stay. Dkt. 21. Ms. Gerjets requests a stay until
13 final adjudication of the underlying case. Dkt. 21, at 3. In the alternative to a stay until final
14 adjudication of the underlying case, Ms. Gerjets requests a stay until resolution of her
15 forthcoming Motion to Consolidate. Dkt. 21, at 3–5. GEICO filed a response in opposition to the
16 Motion to Stay. Dkt. 24. Ms. Gerjets filed a reply. Dkt. 27.

17 **II. DISCUSSION**

18 **A. STAY OF PROCEEDINGS STANDARDS**

19 A district court has broad discretion to stay proceedings as an incident to its power to
20 control its own docket. *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1109 (9th Cir. 2005); *Clinton v.*
21 *Jones*, 520 U.S. 681, 706-07 (1997) (*citing Landis v. North American Co.*, 299 U.S. 248, 254
22 (1936)).

1 When there is an independent proceeding related to a matter before a trial court, the Ninth
2 Circuit has held that a trial court may “find it efficient for its own docket and the fairest course
3 for the parties to enter a stay of an action before it, pending resolution of independent
4 proceedings which may bear upon the case.” *Mediterranean Enters., Inc. v. Ssangyong Corp.*,
5 708 F.2d 1458 (9th Cir. 1983). For a stay to be appropriate, it is not required that the issues of
6 such proceedings are necessarily controlling of the action before the court. *Id.* However, a stay
7 may be improper where the independent proceeding is “unlikely to decide, or contribute to the
8 decision of, the factual and legal issues” in the action for which the stay is requested. *Lockyer*,
9 398 F.3d 1098 at 1113. In deciding whether to abstain, the Ninth Circuit instructs courts to
10 consider “whether the declaratory action will settle all aspects of the controversy; whether the
11 declaratory action will serve a useful purpose in clarifying the legal relations at issue; whether
12 the declaratory action is being sought merely for the purposes of procedural fencing or to obtain
13 a ‘res judicata’ advantage; or whether use of a declaratory action will result in entanglement
14 between the federal and state court systems.” *Gov’t Employees Ins. Co. v. Dizol*, 133 F.3d 1220,
15 1225, n.5 (9th Cir. 1998). Indefinite stays are disfavored by courts. *See Yong v. I.N.S.*, 208 F.3d
16 1116, 1119 (9th Cir. 2000).

17 In determining whether to issue a stay based upon the outcome of a case involving
18 different litigants, a court must weigh three relevant interests: (1) the possible damage that may
19 result from the granting of a stay; (2) the hardship or inequity that a party may suffer in being
20 required to go forward; and (3) the orderly course of justice measured in terms of the simplifying
21 or complicating of issues, proof, and questions of law that could be expected from a stay. *CMAX*,
22 *Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962).

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1 **B. STAY OF PROCEEDINGS ANALYSIS**

2 The Court should grant Ms. Gerjets's request to stay proceedings.

3 1. Possible Damage that May Result from the Granting of a Stay

4 If a stay of proceedings is granted, GEICO may have to continue sharing the cost of Ms.
5 Gerjets's defense in the underlying case. Therefore, to the extent that coverage is not warranted,
6 this factor weighs in favor of denying a stay of proceedings.

7 GEICO contends that coverage is not owed, even if the underlying allegations against
8 Ms. Gerjets are true. Dkt. 24, at 6. The issue of coverage, however, is more appropriate for
9 discussion with respect to GEICO's Motion for Summary Judgment (Dkt. 19), which is pending
10 but not yet ripe for consideration. The parties filed a stipulated motion to extend the noting date
11 of the Motion for Summary Judgment to March 20, 2020, which the Court granted. Dkts. 26; and
12 28. At this time, the Court need not decide or further discuss the issue of coverage.

13 2. The Hardship or Inequity that a Party May Suffer in Being Required to Go Forward

14 In considering whether to grant a stay when there is an underlying third-party action
15 against an insured, such as here, courts in this district have weighed the following concerns:

16 The first concern is that by bringing the action for declaratory
17 judgment regarding coverage, the insurer effectively attacks its
18 insured and thus gives aid and comfort to the claimant in the
19 underlying suit. The second concern is that the suit addressing
20 insurance coverage forces the insured to fight a two-front war,
21 thereby expending its resources fighting both the insurer and the
22 third-party action, which undercuts one of the primary reasons for
23 purchasing liability insurance. The third concern is the real risk
24 that, if the declaratory relief action proceeds to judgment before
 the underlying action is resolved, the insure[d] could be
 collaterally estopped to contest issues in the latter by the results in
 the former.

22 *Federal Ins. Co. v. Holmes Weddle & Barcott P.C.*, 2014 U.S. Dist. Lexis 12456, *9-10, 13-cv-
23 0926-JLR (W.D. Wash. Jan. 31, 2014) (quoting *Allied Prop. and Cas. Ins. Co. v. Roberts*, No.
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1 2:11-cv-00740-MCE-KJN, LEXIS 132239, 2013 WL 5230259, at *3 (E.D. Cal. September 16,
2 2013)).

3 All three of these concerns exist here. First, GEICO effectively aids and comforts the
4 plaintiffs in the underlying case by maintaining this action—on which Ms. Gerjets’s defense in
5 the underlying action may depend. Second, Ms. Gerjets is not only facing the instant coverage
6 dispute and the underlying case, but also the related coverage dispute with CSE—in effect, she is
7 fighting a three-front war. Finally, to the extent that resolving this case would require finding
8 facts significant to the underlying case, there may be some risk that deciding this case could
9 prejudice Ms. Gerjets’s defense in the underlying case.

10 Moreover, the Court observes that Ms. Gerjets has much at stake in the underlying case.
11 Ms. Gerjets’s reply brief contends that, “[i]f Ms. Gerjets is found liable for the harm alleged by
12 the plaintiffs in the underlying matter, it will destroy her reputation; damage or destroy her
13 relationships with her friends, family and community; and cause her severe emotional distress for
14 the remainder of her life.” Dkt. 27, at 4. Even if GEICO were not sharing the cost of Ms.
15 Gerjets’s underlying defense, the cost of defense for GEICO is almost certainly much less of a
16 hardship or inequity than the hardship that Ms. Gerjets would face if her defense in the
17 underlying case were prejudiced here.

18 Therefore, this factor weighs heavily in favor of granting a stay of proceedings.

19 3. The Orderly Course of Justice Measured in Terms of the Simplifying or Complicating
20 of Issues, Proof, and Questions of Law that Could be Expected from a Stay

21 Ms. Gerjets contends that a stay would simplify issues because adjudication of the
22 underlying lawsuit “will resolve many of the factual and evidentiary disputes at issue here,”
23 including coverage issues such as where the alleged inappropriate sexual contact took place and
24 how the Gerjets’s vehicle factors into the alleged abuse. Dkt. 21, at 11–12.

1 On the other hand, GEICO argues that the “coverage issues presented by this case are
2 questions of contract interpretation” and that the underlying lawsuit “will not resolve, or even
3 help resolve, whether or not Ms. Gerjets’ liability is covered by the GEICO policy.” Dkt. 24, at
4 11. GEICO further contends that, “[w]ith coverage questions pending but unresolved, the
5 settlement negotiations will be clouded with uncertainty. Ms. Gerjets will have to make difficult
6 settlement decisions without knowing whether her insurers will pay for any settlement to which
7 she agrees.” Dkt. 24, at 11.

8 This factor is mixed but slightly favors Ms. Gerjets’s position. The risk of factual overlap
9 between the cases appears slight because “GEICO is seeking a legal ruling about its coverage
10 obligations *assuming* that all underlying allegations are true.” Dkt. 24, at 5 (emphasis in
11 original). Additionally, it is possible that the unresolved issue of coverage could impede
12 settlement discussions in the underlying case. The Court observes that Ms. Gerjets claims to be a
13 person of limited means, Dkt. 21, at 3 (“Ms. Gerjets is a retired, 70-year old woman. She is not
14 employed and lives on the approximately \$3,400 per month she receives from her social security,
15 pension, and a monthly payment from the sale of her home.”), and it remains unclear what effect
16 a judgment would have against her without insurance coverage.

17 However, this case may be simplified by a clear determination of liability in the
18 underlying case. A stay would certainly simplify proceedings because the Court would not have
19 to be concerned with prejudicing Ms. Gerjets in the underlying case.

20 Therefore, this factor weighs slightly in favor of granting a stay of proceedings.

21 4. Conclusion

22 Analysis of the factors above yields mixed results. Although the first factor may weigh in
23 favor of denying a stay of proceedings, the remaining two factors outweigh it in favor of granting
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1 a stay of proceedings. Therefore, the Court should grant Ms. Gerjets's request for a stay of
2 proceedings in this case until final adjudication of the underlying case. Within two weeks of the
3 final adjudication of the underlying case, but no later than September 4, 2020, the parties should
4 file a status update with the Court.

Because the Court should grant Ms. Gerjets's request to stay proceedings until final adjudication of the underlying case, the Court need not consider Ms. Gerjets's alternative request to stay proceedings until Ms. Gerjets's forthcoming Motion to Consolidate.

III. ORDER

THEREFORE, it is HEREBY ORDERED that:

- Defendant Andrea M. Gerjets's Motion to Stay (Dkt. 21) is **GRANTED**;
 - This case is **STAYED** and all pending motions are **STRICKEN WITHOUT PREJUDICE**; all stricken motions may be refiled, if appropriate, after the conclusion of the stay; and
 - The parties shall file a status report with the Court within two weeks of final adjudication in the underlying case, *T.A.T., et al. v. Keyport Bible Church, et al.*, 18-2-02688-18 (Kitsap Ct. Super. Ct. 2018), but no later than **September 4, 2020**.

The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any party appearing *pro se* at said party's last known address.

Dated this 3rd day of March, 2020.

Robert J. Bryan

ROBERT J. BRYAN
United States District Judge